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**Date: October 6, 2011****Program Guidance: 11-06**

To: Energy Service Providers

Subject: Administrative Expenses under ARRA DOE WAP

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**Purpose**

The object of this guidance is to clarify the requirements with respect to administrative expenses under ARRA DOE WAP, to consider the impacts of these requirements on providers who fail to expend fully program funds, and to consider how the availability of admin dollars will impact the reallocation of funding among providers.

**The Problem**

The possibility that California will be unable fully to expend the ARRA DOE WAP grant has raised a number of questions concerning the expenditure of administrative funds, as follows:

- Historically, adjustments are made at the time of contract closeout. Under this procedure the ratio of the administrative portion of the contractor's allocation to the program dollars is preserved, so that if, say, only 80% of the program dollar budget is expended over the life of the grant, then only 80% of the admin portion of the allocation budget may be spent, and any excess in admin expenditures, as a proportion of the allocation<sup>1</sup>, must be returned. In the above example, a contractor who spent 100% of the admin dollars would have to return 20% of those dollars in order to maintain the proper ratio to program expenditures. In the past, contractors either fully expended program dollars (or virtually all of the dollars) or were able to keep administrative expenditures in proportion. Additionally, the DOE WAP grant was so small that amounts of admin dollars returned were negligible. ARRA DOE WAP poses a different challenge, not only because of the size of the grant, but also because of the ramp up process and the associated administrative burdens placed considerable demand on contractors' administrative budgets. Accordingly, the potential for disallowance is considerable.
- This potential for disallowance under many provider contracts makes full expenditure of program dollars all the more important. But it also begs the question, are other administrative funds available and is there a possibility of relief within the strictures of applicable law, in the event the entire allocation is not spent?

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1 The budget for administrative expenses which appears in ARRA DOE WAP service provider contracts is 5% of the total allocation.

- A third consideration is the effect of a reallocation of funds, i.e. a transfer from some providers to others. In principle, a proportionate amount of the admin dollars should be included with the transfer of program funds. But what if all, or an excessive proportion of the admin dollars, have already been spent and therefore unavailable?

### Authorities and Applicable Law

CSD has posed these and related questions to DOE. Following is a summary of conclusions based on DOE's response:

- The primary authority governing expenditure of administrative funds is found in 10 CFR 440.18 (d), which provides as follows:

Not more than 10 percent of any grant made to a State may be used by the grantee and subgrantees for administrative purposes in carrying out duties under this part, except that not more than 5 percent may be used by the State for such purposes, and not less than 5 percent must be made available to subgrantees by States. A State may provide in its annual plan for recipients of grants of less than \$350,000 to use up to an additional 5 percent of such grants for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by DOE pursuant to this part.

DOE has interpreted this provision to mean that a grantee (the State) and subgrantees (service providers) together may not expend more than 10% of the total grant for administrative purposes *under any circumstances*. The State's portion of the admin funds is capped at 5% and not less than 5% of the grant shall be "made available" to service providers. Apart from the stated exception of subgrantees allocated less than \$350,000, the State has the latitude to make additional administrative funds available to contractors.<sup>2</sup> Accordingly, there is no additional source of administrative funds available to the state as a whole.<sup>3</sup>

- DOE indicates that should California fail to expend fully the ARRA DOE WAP program funds, but expends admin dollars in greater proportion to the program dollars, the excessive expenditure of admin funds may be *questioned*. The authority cited by DOE is 10 CFR 600.220 (b)(4), which provides in part: "*Budget control*. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant...."<sup>4</sup> DOE also references the "reasonableness requirement" found in OMB Circular A-87 to support a questioning of administrative costs that are disproportionate to program expenditures. DOE has given no indication of the circumstances under which such questioned costs might be disallowed, but the risk of disallowance cannot be ignored. Service providers should be cognizant of the fact that in the event there is a disallowance of administrative costs against

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<sup>2</sup> See DOE Weatherization Program Notice (WPN) 11-1 at paragraph 1.4.

<sup>3</sup> The unavailability of additional admin funds poses a potential problem for both CSD and service providers should the program termination date be extended beyond March 31, 2012. In that event, presently budgeted admin dollars must be stretched to cover additional months of admin expenditures.

<sup>4</sup> Although the section cited by DOE concerns State and local grantees only, as similar provision, which applies to non-profits, can be found at 10 CFR 600.121 (b)(4).

the State because the aggregate admin costs exceed 10%, contractors who exceed their allowable proportion of administrative costs will, in turn, be subject to disallowance and repayment.

- Interestingly, DOE Weatherization Program regulations<sup>5</sup> do not specifically define allowable administrative costs, but leave it to the State to define them. Accordingly, DOE recognizes that the State has flexibility on charging administrative costs, citing long-standing guidance.<sup>6</sup> It should be noted, however, that the general provisions regarding administrative expenditures found in the OMB circulars are applicable.

### Policy, Guidance and Recommendations

There is some ambiguity and uncertainty about what constitutes administrative expenses, how they may be allocated and how levels of programmatic expenditure impact their allowability, but there is no doubt that the total of administrative costs in the state cannot exceed 10% of the ARRA DOE WAP grant. Accordingly, needed accommodation to address the unique challenges posed by the ARRA program must come from the way administrative costs are defined, charged and allocated by contractors and within the state as a whole.

#### A. Recommended Actions by Service Providers.

- Since administration budgets were determined with the expectation that grant allocations would be fully expended, service providers should make every effort to fully expend their grant allocation. This is the most certain way to avoid the prospect of administrative cost disallowance.
- Contractors who are in danger of exceeding their admin budgets (or the allowable proportion thereof) should examine how expenditures are categorized and look for opportunities to shift costs, whenever possible, to program and training and technical assistance budgets. CSD will be issuing a contract amendment in which administrative costs are redefined and the standards under which Contractor may charge expenditures as either administrative or program costs are set out. (The relevant language has been developed for the amendment and can be found in Attachment A.) Contractors should bear in mind that:
  - cost allocations must be in conformity with the requirements of applicable OMB circulars;
  - the shifting of costs is optional and should be undertaken only if justified by the potential benefit;
  - the contract amendment provisions do not apply to Contractors using an approved indirect cost rate;
  - cost allocations should be made in accordance with a written cost allocation plan, amended if necessary; and

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5 10 CFR Part 440.

6 See guidance memoranda in House Report 98-886 which accompanied the 1985 Appropriations Bill as referenced in WPN 11-1 at paragraph 5.21.

- the plan must be used for *all of Contractor's Federally-funded programs on a consistent and fair-share basis.*
- Travel and per diem costs related to the participation and attendance at policy advisory committees and work groups may be treated as a program cost, rather than as an administrative cost.
- If shifting costs is deemed beneficial and cost-effective, Contractors should avail themselves of every opportunity to recoup administrative costs that can be reclassified retroactively in accordance with the forthcoming amendment and this guidance to the extent possible within the limitations of Contractor's accounting system.
- Service providers who anticipate being unable to fully expend program dollars or who are willing to relinquish a portion of their funding allocation should make every effort to minimize administrative costs. The former are at particular risk of having admin costs questioned and the latter will be given higher priority when accommodation from CSD is given. Contractors who can make admin dollars as well as program dollars available for reallocation will be given the highest accommodation of all.

#### B. CSD's Plan for ARRA DOE WAP Administrative Costs.

- CSD will establish a pool of administrative funds consisting of excess State operations admin dollars and admin dollars recovered from providers. The pool will be used to:
  1. facilitate the reallocation of program funds to new service providers and to existing providers able to expend supplemental allocations;
  2. fund administrative costs incurred at the State and local level during any program extension granted beyond March 31, 2012; and
  3. accommodate or assist contractors who are at risk of having administrative costs questioned or disallowed.
- CSD will identify service providers who have fully expended administrative dollars but not program dollars or who are in danger of expending administrative funds disproportionately to program funds, risking that the administrative costs will be questioned. Assistance or accommodation from CSD will be provided to such contractors, if and as funds are available, in the following order of priority:
  1. To contractors who, by mutual agreement, return funds to CSD for reallocation and who have the lowest proportion of potential questioned administrative costs as a percentage of the contractor's original allocation, in order from lowest to highest.
  2. To contractors who retain program funds with the intention of fully expending the allocation, but fail to do so, resulting in potential questioned administrative costs. (Ordered from the lowest proportion of questioned costs, as a percentage of the original allocation, to the highest.)

# ATTACHMENT A

## Language Developed for Forthcoming Contract Amendment

### ARRA EXHIBIT B

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#### B. Administrative

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- b. Administrative Costs shall mean actual costs for auxiliary functions which *do not* support a specific category or categories of program costs as set out in Subparagraph 3. C. below, but are instead unattributable and can only be characterized as supporting the grant program as a whole. Contractor may, on a reasonable and supportable basis, and in accordance with OMB circulars, apportion the following auxiliary functions and charge their cost on a pro rata basis to: 1) an appropriate category or categories of program costs; or 2) administrative costs: salaries, wages, workers compensation, and fringe benefits for administrative staff and related facilities, utilities, office and computer equipment, telephone, travel, accounting, auditing, monitoring assistance, office supplies, costs associated with the issuance of payroll and like services necessary to sustain the direct effort involved in administering a grant program or an activity providing services to the grant program. Contractor is aware that:
  - i. the provisions of this subparagraph do not apply if Contractor utilizes an approved indirect cost rate;
  - ii. as required under OMB circulars, the allocations made under this subparagraph should be in accordance with Contractor's written cost allocation plan; and
  - iii. as required under OMB circulars, the cost allocation plan employed shall be used for all Federally-funded programs administered by Contractor and costs charged to these programs shall be treated consistently and on a fair-share basis.

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#### C. Program Costs

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##### 5) Training

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- e. Travel and per diem costs related to the participation and attendance at policy advisory committees and work groups will be reimbursed as a program cost, upon submittal of an allowable claim to CSD.